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CLERK

IN THE

Supreme Court of the United States

October Term, 1948.

No. 772

WILLIAM D. NOLAND, Trustee, and WILLIAM D. NOLAND, Personal,
Petitioners,

vs.

HARRY C. WESTOVER, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division, GEORGE D. MARTIN, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; NORMAN HAYWARD, Internal Revenue Agent, Los Angeles, California; RAYMOND B. SULLIVAN, Acting Internal Revenue Agent, Los Angeles, California; and JOHN H. CRAMER, Internal Revenue Agent, Los Angeles, California,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

WILLIAM D. NOLAND, *Trustee,*
in Propria Persona.

WILLIAM D. NOLAND, *Personal,*
in Propria Persona.

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SUBJECT INDEX

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WILLIAM D. NOLAND, Trustee, and WILLIAM D. NOLAND, Personal,
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Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Chief Justice and Honorable Associate Justices of the Supreme Court of the United States:

Comes now William D. Noland, Trustee, and William D. Noland, Personal, and respectfully petitions the above Honorable Court for a Writ of Certiorari to review a judgment of the United States Court of Appeals dated February 11, 1949, and petitioners hereof contend that the above entitled Supreme Court has jurisdiction to review this appeal hereof in relation to the said judgment in question on grounds as follows (United States Code (1940 Edition), under Title 28—Judicial Code and Judiciary—Section 347 (Judicial Code 240)): (a) In any case, civil

or criminal, in a court of appeals, or in the United States Court of Appeals for the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted appeal.

The date of judgment sought to be reviewed as made is February 11, 1949, by United States Court of Appeals, Ninth Circuit, and the date of application for an appeal was on or about March 12, 1949.

The nature of the case is a charitable organization, named Dr. William D. Noland Trust Estate, Ltd., a Benevolent Trust Estate, organized under a contract and agreement to establish a benevolent trust estate to be administered by Natural Person Trustees in joint tenancy, holding in trust as to distribution of avails, acting under citizenship, common law rights of contract, and constitutional rights, federal laws and immunities vouchsafed to all persons, as set forth and provided in the Constitution of the United States of America [R. 36], for which William D. Noland, Trustee, is representing his personal interest as a trustee, and also his personal interest, personally, wherein internal revenue agents took assets and funds from the said charitable organization and charged them to the personal account of William D. Noland, and then taxed for income tax the said charitable organization and William D. Noland personally, taxing both for income tax. [R. 15, pars. 4-18.]

Actions were brought in the District Court of the United States for the Southern District of California, Central Division, to prohibit aforesaid income tax activities of aforesaid internal revenue agents, and motions for summary judgments were brought by defendants which were granted by the said District Court below, and the said District Court gave an order to amend bill of complaint [R. 174-175], as a second amended bill of complaint [R. 13], and the said District Court below denied a hearing on said second amended bill of complaint which is shown by [R. 189-195], and by granting two summary judgments [R. 81-83] against complainants and the first amended bill of complaint, thereby complainants in said District Court below contend that the said District Court abused its discretion in granting said two summary judgments against your petitioners hereof, who were the complainants in the District Court below, and said two summary judgments were made and entered by the said District Court on April 21, 1948, denying second amended bill of complaint a hearing and a day in court.

An appeal was taken from aforesaid two summary judgments granted by the aforesaid District Court below to the Court of Appeals of the United States for the Ninth Circuit, and said Appellate Court sustained the judgment of the said District Court by dismissing said appeal.

The designation of the record on appeal from the said District Court below to said Court of Appeals was stipulated by all parties on both sides, and the said Appellate Court allowed the appellees to file a motion with additional exhibits which said motion was granted, disregarding an objection which was filed by appellants opposing said motion upon the ground of the designation of the record on appeal, by all parties in the District Court below, and

petitioners hereof contend that the said Court of Appeals for the Ninth Circuit abused its discretion in granting said motion with said exhibits, also in sustaining the denial of a hearing of the second amended bill of complaint which was filed in the District Court below on April 19, 1948, the same date of April 19, 1948, when the District Court below rendered two summary judgments based upon the first amended bill of complaint, disregarding the second amended bill of complaint which the said District Court had given an order for said amendment.

As further jurisdiction for this petition for a writ of certiorari, petitioners hereof cite in support of said jurisdiction points and authorities as follows:

The defendants in the District Court below, in support of their claims, set forth:

> "Under Sec. 167 of the Internal Revenue Code, where the trustee and trustor and the beneficiary are one and the same the income is taxable to the Trustor." [R. 53.]

As a matter of fact, the record shows that such is not the case as cited by said defendants, the respondents hereof, as there are a board of trustees and numerous beneficiaries, which is clearly shown by the record hereof [R. 41 and 48], and in support of petition of petitioners hereof, under Title 26, Internal Revenue Code, Section 23, subdivision (o), paragraph (2), it reads as follows:

> "(o) Charitable and other contributions: (2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or any State or Territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children

or animals, no part of the net earnings of which enures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

And further in support of jurisdiction, petitioners hereof cite cases as follows:

The Court will support the trustees in carrying out the terms of their trust estate contract and agreement:

Clews v. Jamison, 182 U. S. 461 (21 S. 845), 45 L. Ed. 1185.

In *Edwards v. Kearzey,* 96 U. S. 600, the Court said:

"The obligation of a contract includes everything within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without the contract, as such, in the view of the law ceases to be and falls into the class of those imperfect obligations, as they are termed which depend for their fulfillment upon the will and conscience of those upon whom they rest. The ideas of right and remedy are inseparable."

In *Farrington v. Tennessee,* 95 U. S. 683, the Court said:

"The amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of the court to redress the wrong."

And the Supreme Court held likewise in cases as follows:

Planters Bank v. Sharp, 6 How. 327;
Green v. Biddle, 8 Wheat. 84.

And in the case of *Sturgis v. Crownshield,* 4 Wheat. 197, the Supreme Court said:

> "Under the Constitution the obligation of a contract is not to be impaired at all. It is not a question of degree, manner, or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force; and any deviation by postponement or acceleration of the period of performance, or imposing conditions not expressed, or dispensing with those expressed, is a violation of the obligation. The slightest variation of the obligation impairs it to that extent and is unconstitutional."

Questions presented are as follows:

1. Petitioners hereof were denied constitutional rights, by the District Court below, disregarding an order to amend first amended bill of complaint as made by said District Court, which was amended by petitioners hereof, and the said District Court after second amended bill of complaint was filed and served, granted two summary judgments against the first amended bill of complaint, thereby disregarding the second amended bill of complaint, and this procedure of the District Court below was sustained by the United States Court of Appeals for the Ninth Circuit, which petitioners contend is a constitutional question of rights to a day in court with their second amended bill of complaint which has not been had.

2. The obligations of contract and agreement under which aforesaid charitable organization and benevolent trust estate are organized, have been impaired by the

proceedings and rulings of the District Court below and sustained by the Court of Appeals for the Ninth Circuit, which are in violation of the provisions of the Constitution of the United States in relation to contracts, which petitioners contend is a constitutional question of contract rights.

3. Petitioners contend that the District Court below and the Court of Appeals for the Ninth Circuit have abused discretion and deprived petitioners of lawful rights, which is a constitutional question, of petitioners' rights.

The reasons relied upon for allowance of the writ of certiorari are as follows:

1. The second amended bill of complaint in the District Court below which was ordered by said Court has had no hearing or a day in court, and the District Court disregarding said amendment was sustained by the Court of Appeals for the Ninth Circuit, and second bill does not pray for any tax refunds, as set forth by said Courts below in rulings, opinions, citations and judgments.

2. The obligation of contract under which aforesaid charitable organization is established have been impaired in the District Court below and sustained by the Court of Appeals for the Ninth Circuit.

3. The District Court below and the aforesaid Court of Appeals for the Ninth Circuit have abused their discretion thereby depriving the petitioners hereof of constitutional rights in court procedure and contract rights, as herein set forth.

Wherefore, petitioners pray this appeal and writ of certiorari be granted.

Dated May 4, 1949.

Respectfully submitted,

WILLIAM D. NOLAND, Trustee,
In Propria Persona.

WILLIAM D. NOLAND, Personal,
In Propria Persona.

State of California, County of Los Angeles—ss.

William D. Noland, being first duly sworn, deposes and says: That he is the petitioner for a writ of certiorari as set forth in the foregoing petition and having read the foregoing petition in the above entitled matter, believes it to be true, except those matters which are based upon information and belief.

WILLIAM D. NOLAND.

Subscribed and sworn to before me this 4th day of May, 1949.

(Seal) BEULAH E. DONATH,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Nov. 16, 1950.

APPENDIX.

In the United States Court of Appeals for the Ninth Circuit.

William D. Noland, Trustee, and William D. Noland, Personal, Appellant, vs. Harry C. Westover, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division, *et al.*, Appellees. No. 11, 978.

Feb. 11, 1949.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before: Stephens, Bone and Orr, Circuit Judges. Stephens, Circuit Judge.

William D. Noland, plaintiff-appellant, personally and in the capacity of a trustee of a charitable trust entitled "Dr. William D. Noland Trust Estate, Ltd.", appeals from a summary judgment in favor of Harry C. Westover, Collector of Internal Revenue at Los Angeles, California, (Sixth Collection District of California), a defendant-appellee, and against Noland in each capacity alleged, and from a summary judgment in favor of George D. Martin, Norman Hayward, Raymond B. Sullivan, and John H. Cramer, all Internal Revenue Agents in the Collector's office, defendants-appellees, and against Noland in each capacity alleged. Each of the judgments was for the dismissal of the complaint in the case with costs.

William D. Noland is a Doctor of Chiropractic who does not claim to be a lawyer, but appears herein for himself in each of the capacities above stated. In attempting to handle technical tax and trust matters he has ventured far

beyond his knowledge and has made it difficult if not impossible for courts to consider and adjudicate upon the merits of his claims.

The organization entitled "Dr. William D. Noland Trust Estate, Ltd.," herein called the "Trust," purports to be formed for and it is alleged that for the period in suit it has been conducted as a benevolent charity trust.

According to the terms of the trust, Dr. Noland, in his professional capacity, works under the management of the trust for the benefit of poor people and especially for poor children. Money received for his services belong to the trust and only sufficient funds for him with his living needs are paid to the doctor-donee.

The burden of the complaint is that certain books and records of the trust were examined on or about July 6, 1942, by Norman Hayward, one of the revenue agents named as defendant, and that property of the trust has been by him "fraudulently confiscated and assigned, transferred and delivered to the account of William D. Noland personally," which has caused unlawful income tax assessments and penalties to be laid against him. The additional taxation referred to was for the years 1937-1941 inclusive. Shortly after going over the books, Hayward demanded and Noland paid $80.45 additional tax for the year 1937, and the trustees paid $35.64 in error for the tax year of 1942. (It appears that Hayward went over the books of the trust and assigned certain income charged to the trust to the personal account of Dr. Noland.)

On June 26, 1945, defendants Martin and Cramer addressed a letter to the trust with statements attached dated November 3, 1944, showing further "confiscations" from the trust and demanding that Noland personally pay addi-

tional income taxes for the year 1942, and on January 26, 1945, an additional tax was demanded. On December 29, 1945, the Collector of Internal Revenue sent Dr. Noland a notice of tax due for the year 1943. Other demands for taxes have been made by the Collector of Internal Revenue from the trustees. Dr. Noland denies owing the taxes demanded, claiming the income taxed belonged to the benevolent trust and is not taxable under Sec. 167 Internal Revenue Code (26 U. S. C. A.), but that Sec. 23(a)(1) and (o)(2) and Sec. 120 Internal Revenue Code (26 U. S. C. A.) apply.

Each of the defendants made a motion for summary judgment and each of said motions was granted.

Collector Westover's affidavit is to the effect that he assumed office July 1, 1943, and never did collect or receive any tax funds from complainants, and was uncontradicted. Defendants Martin, Sullivan, and Cramer showed, by affidavit, that they have never received or collected taxes from complainants. Hayward's affidavit is to the effect that on July 6, 1942, he received $80.45 as income taxes for 1937, and paid the sum over to the then Collector of Internal Revenue, and has never received any other sum from or for complainants.

The showing is sufficient to support judgments for summary judgment.

The only definite relief asked is for declaratory judgment, but the statute authorizing the district court to render a declaratory judgment does not authorize its applica-

tion in controversies in respect of tax problems. 28 U. S. C., Sec. 2201; Red Star Yeast & Products Co. v. La Budde, 83 F. 2d 394; Wilson v. Wilson 141 F. 2d 599.

There is a prayer for such relief as the court may deem proper. It is clear that no judgment for refund of taxes paid can be made under this general prayer. Section 3772(a) of the Internal Revenue Code (26 U. S. C. A.) provides that a claim for refund must be filed with the Collector of Internal Revenue in accordance with law, and Section 322(b)(1) of the Internal Revenue Code (26 U. S. C. A.) provides that the claim for refund must be made within three years from the filing of the taxpayer's return, or within two years from the payment of the tax. The only payments for which claims for refund have ever been made were on behalf of Dr. Noland, personally and as a trustee, for the sum of $85.45 for tax paid July 6, 1942, to defendant-appellee Hayward for delivery to the Collector, and for the sum of $35.64 allegedly paid in error by trustees of the trust for 1942 taxes. Both of these sums were paid more than three years prior to the filing of refund claims on March 15, 1943. The claims were not timely.

There are other circumstances which make it impossible for a court to grant relief under the complaint.

Affirmed.

(Endorsed:) Opinion. Filed Feb. 11, 1949. Paul P. O'Brien, Clerk.

In the District Court of the United States, Southern District of California, Central Division.

No. 7315-O'C

William D. Noland, H. K. Miller and Harry R. Maxwell, Trustees; Dr. William D. Noland, Trust Estate, Ltd., a Benevolent Trust Estate, and William D. Noland, Complainants, vs. Harry C. Westover, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; George D. Martin, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; Norman Hayward, Internal Revenue Agent; Raymond B. Sullivan, Acting Internal Revenue Agent; and John H. Cramer, Internal Revenue Agent, Defendants.

SUMMARY JUDGMENT IN FAVOR OF DEFENDANT HARRY C. WESTOVER.

The defendant, Harry C. Westover, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division, having on the first day of December, 1947 filed a Motion in the above entitled action for Summary Judgment and said Motion coming on regularly to be heard before the Court at Los Angeles, California, on March 30, 1948, the Honorable Charles C. Cavanah, Judge presiding and the said defendant appearing by James M. Carter, United States Attorney for the Southern District of California, (85) E. H. Mitchell and George M. Bryant, Assistant United States Attorneys for said district, and Eugene Harpole and Loren P. Oakes, Special Attorneys, Bureau of

Internal Revenue, and the plaintiffs-complainants William D. Noland as Trustee of the Dr. William D. Noland Trust Estate, Ltd., and William D. Noland, Personal, appeared by William D. Noland, memoranda of Points and Authorities in support of the positions of the respective parties had theretofore been filed and the Court at said time heard the argument of counsel, and the Court having considered the said memoranda, arguments of counsel, together with the files, pleadings, exhibits and other memoranda in the above entitled case as well as those of the related case numbered 5716-W therefrom concluded and decided that the Motion of said defendant should be granted.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the defendant, Harry C. Westover, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division, be and he hereby is given Summary judgment against the plaintiffs-complainants, William D. Noland as a Trustee of the Dr. William D. Noland Trust Estate, Ltd., and William D. Noland, personal, for dismissal of the above entitled action and the costs of said defendant to be taxed by the Clerk of this Court in the sum of $.....

Dated: April 21st, 1948.

/s/ CHARLES C. CAVANAH,
District Judge.

Judgment entered April 21, 1948. Docketed April 21, 1948. Book C. O. 50, Page 255. Edmund L. Smith, Clerk.

(Affidavit of Service by Mail attached.)

(Endorsed): Filed April 21, 1948. (86)

[Title of District Court and Cause.]

SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS GEORGE D. MARTIN, NORMAN HAYWARD, RAYMOND B. SULLIVAN AND JOHN H. CRAMER.

The defendants, George D. Martin, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; Norman Hayward, Internal Revenue Agent; Raymond B. Sullivan, Acting Internal Revenue Agent; and John H. Cramer, Internal Revenue Agent, having on the first day of December, 1947, filed a Motion in the above entitled action for Summary Judgment and said Motion coming on regularly to be heard before the Court at Los Angeles, California, on March 30, 1948, (88) the Honorable Charles C. Cavanah, Judge presiding, and the said defendants appearing by James M. Carter, United States Attorney for the Southern District of California, E. H. Mitchell and George M. Byrant, Assistant United States Attorneys for said District, and Eugene Harpole and Loren P. Oakes, Special Attorneys, Bureau of Internal Revenue, and the plaintiffs-complainants William D. Noland as Trustee of the Dr. William D. Noland Trust Estate, Ltd., and William D. Noland, personal, appeared by William D. Noland, memoranda of Points and Authorities in support of the positions of the respective parties had theretofore been filed and the Court at said time heard the argument of counsel, and the Court having considered the said memoranda, arguments of counsel, together with the files, pleadings, exhibits and other memoranda in the above entitled cases as well as those of the related case numbered 5716-W therefrom concluded

and decided that the Motion of said defendants should be granted.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the Defendants, George D. Martin, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; Norman Hayward, Internal Revenue Agent; Raymond B. Sullivan, Acting Internal Revenue Agent; and John H. Cramer, Internal Revenue Agent; be and they hereby are given Summary Judgment against the plaintiffs-complainants, William D. Noland as Trustee of the Dr. William D. Noland Trust Estate, Ltd., and William D. Noland, personal, for dismissal of the above entitled action and the costs of said defendants to be taxed by the Clerk of this Court in the sum of $.....

Dated: April 21st, 1948.

/s/ Charles C. Cavanah,
District Judge.

Judgment entered April 21, 1948. Docketed April 21, 1948. Book C. O. 50, Page 257. Edmund L. Smith, Clerk.

(Affidavit of Service by Mail Attached)

(Endorsed): Filed April 21, 1948. (89)

IN THE

Supreme Court of the United States

October Term, 1948.

No. .....

WILLIAM D. NOLAND, Trustee, and WILLIAM D. NOLAND, Personal,
Petitioners,

vs.

HARRY C. WESTOVER, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division, GEORGE D. MARTIN, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; NORMAN HAYWARD, Internal Revenue Agent, Los Angeles, California; RAYMOND B. SULLIVAN, Acting Internal Revenue Agent, Los Angeles, California; and JOHN H. CRAMER, Internal Revenue Agent, Los Angeles, California,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Honorable Associate Justices of the Supreme Court of the United States:

The petitioners hereof in petitioning the above entitled Honorable Court for a Writ of Certiorari, within this appeal which is taken from a judgment of the United States Court of Appeals for the Ninth Circuit, dated February 11, 1949 [R. 211-216] dismissing an appeal taken from two summary judgments in the District Court of the United States for the Southern District of California, Central Division, dated April 21, 1948. [R. 81-83.]

Jurisdiction.

The grounds upon which the jurisdiction of the above entitled court is invoked is as follows: Under Title 28, Judicial Code and Judiciary, Section 347. (Judicial Code, Sec. 240.)

> "(a) In any case, civil or criminal, in a circuit court of appeals, or in the United States Court of Appeals for the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted appeal."

Statement of the Case.

In the matter hereof on appeal before the above entitled Honorable Supreme Court, a charitable organization is involved [R. 36-49], Internal Revenue Agents transferred assets, funds and property from said charitable organization to personal account of William D. Noland, and then charged income taxes against said charitable organization and William D. Noland personally, thereby taxing both for income tax. [R. 15, pars. 4-18.]

Actions were brought in the District Court of the United States for the Southern District of Columbia, Central Division, to prohibit aforesaid actions of afore-

said Internal Revenue Agents [R. 13-35], and the said District Court granted leave and ordered that bill of complaint be amended [R. 174-175] which was done by petitioners hereof as complainants in District Court below and filed and served as a second amended bill of complaint, which said second amended complaint was denied a hearing by the said District Court, which is shown by the record hereof [R. 189-195], and through this error on the part of said District Court the said Court rendered two summary judgments [R. 81-83] against complainants and the first amended complaint, which were preceded by a proceeding of said District Court on April 19, 1948 [R. 189-195], and on the same date, April 19, 1948, the second amended bill of complaint was filed, and on April 21, 1948, the said two summary judgments were made and entered by the said District Court, therefore, petitioners hereof contend that the second amended bill of complaint has had no hearing and petitioners hereof have been deprived of their day in court.

An appeal was taken from aforesaid two summary judgments of the District Court below, to the Court of Appeals for the United States, for the Ninth Circuit, and the said Appellate Court sustained the judgment of the said District Court below by a dismissal of said appeal.

Assignment of Errors.

Petitioners hereof contend that errors in the proceedings of the United States Court of Appeals for the Ninth Circuit are as follows:

I.

The Court erred in dismissing appeal by not remanding case to District Court below for a hearing and day in court of the second amended bill of complaint, which bill has had no hearing, and deprived of a day in court.

II.

The Court erred in dismissing appeal by not upholding the contract obligations of the contract under which aforesaid charitable organization and benevolent trust estate are organized.

III.

The Court erred in dismissing appeal by not protecting the contract against impairment of obligations of said contract, under which said charitable organization and benevolent trust estate are organized.

IV.

The Court erred in dismissing appeal by not protecting the trustees' books and records against unlawful seizure as set forth in record.

V.

The Court erred in dismissing appeal, by sustaining an abuse of discretion in the District Court below by said District Court.

VI.

The Court erred in dismissing appeal, by an abuse of its discretion in sustaining the proceedings in the District Court below.

Summary.

A summary of the cause involved in this appeal is a matter wherein a charitable organization in the form of a benevolent trust estate was organized on June 1, 1935 [R. 36-49], and said charitable organization functioned under the terms and conditions of its contract and agreement by the trustees, until on or about July 6, 1942, when one Norman Hayward, Internal Revenue Agent, called at the office of said charitable organization, and threatened William D. Noland, one of the trustees of a board of trustees, with the issuance of a warrant, if the books and records of the trustees were not given to said Internal Revenue Agent to make an examination of said trustees' books and records, and under the said threat the books and records of the trustees for said charitable organization and benevolent trust estate [R. 15, pars. 4-18] were given to said Internal Revenue Agent, and then the said Internal Revenue Agent and other Internal Revenue Agents, assigned, transferred and delivered assets, funds and property from said trustees' books and records to the personal account of William D. Noland, and then made demands for various and different amounts of income taxes from the said charitable organization and benevolent trust estate and from William D. Noland, personally, as an additional income taxation, as some taxes had been paid formerly by the trustees for said charitable organization and benevolent trust estate in error, and thereby additional income taxes were charged against the said benevolent

trust estate and William D. Noland personally by the said Internal Revenue Agents. [R. 51-56.] The trustees for said benevolent trust estate, as well as William D. Noland personally, did not consent or agree that the said Internal Revenue Agents could make the assignments, transfers and deliveries of the property, assets and funds of the said benevolent trust estate from the said trust estate to the personal account of William D. Noland personally, for the purpose of said Internal Revenue Agents creating additional income taxation against said charitable organization and benevolent trust estate and William D. Noland personally.

Actions were commenced in the United States District Court for the Southern District of California, Central Division, to prohibit the aforesaid procedure on the part of the aforesaid Internal Revenue Agents, the first action was against the said Internal Revenue Agents individually which was dismissed [R. 98-115], and the second action was against the said Internal Revenue Agents as agencies of the United States which was dismissed [R. 13-35], and in said second action, a second amended bill of complaint had no hearing or a day in court in the said District Court below, being dismissed without a hearing, and an appeal was taken from said District Court to the United States Court of Appeals for the Ninth Circuit, and upon having a hearing before said Court of Appeals, the said Appellate Court rendered a judgment dismissing said appeal. [R. 211-216.]

Argument.

I.

The contract and agreement under which the aforesaid charitable organization and benevolent trust estate are organized and established, is a document under the provisions of the Constitution of the United States [R. 36-49], and the said contract and agreement was written by the late Franklin P. Bull, in the establishment of said charitable organization and benevolent trust estate, and the said Franklin P. Bull had practiced law in the State of California for over 50 years, and he was commonly known as Judge Bull.

The defendant Internal Revenue Agents in the aforesaid District Court below, claim it is ruled by Section 167 of Federal Internal Revenue Code, and cite as follows:

> "Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.
>
> Respectfully,
>
> GEORGE D. MARTIN,
> Internal Revenue Agent in Charge.
>
> Enclosures: Report of examination of waiver 870. Form of acknowledgment. [47]
>
> Name: WILLIAM D. NOLAND Year: 1942
>
> Net income disclosed by return Form 1041 No. 1453688 .....$ 287.63
>
> Add: The detail of income and expenses is shown on the next sheet attached. Under Sec. 167 of the Internal Revenue Code where the trustee and trustor and the beneficiary are the same the income is taxable to the Trustor.....3,935.47"
>
> [R. 53.]

Petitioners hereof, contend that the said Section 167 of the Federal Internal Revenue Code, does not have any application to or against the aforesaid charitable organization and benevolent trust estate [R. 36] as cited aforesaid by aforesaid Federal Internal Revenue Agents, because there are a board of trustees and numerous beneficiaries in said benevolent trust estate [R. 41 and 48], and said petitioners hereof contend in support of petition for writ of certiorari, that under Title 26, Internal Revenue Code, Section 23, Subdivision (o), it reads as follows:

> "(o) Charitable and other contributions: (2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or any State or Territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which enures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

II.

The aforesaid Internal Revenue Agent, Norman Hayward, a respondent herein, by and through threats of warrants for arrest of aforesaid William D. Noland, petitioner hereof, the trustees' books and records were given to the said Norman Hayward, Internal Revenue Agent, who spent several days reviewing same [R. 15 par. 4,-18], and after said books and records were reviewed, then he transferred and delivered assets, funds and property belonging to aforesaid charitable organization to the personal account of William D. Noland personally, and then said Internal Revenue Agent taxed the said assets, funds and

property against the said William D. Noland personally [R. 51-56], which said acts by the said Internal Revenue Agent are prohibited by the Fourth Amendment to the Constitution of the United States, it provides:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

In a leading case (*Boyd v. United States,* 116 U. S. 616), it was held that a compulsory production of private papers to be used as evidence against the owner, is an unreasonable search and seizure within the Fourth Amendment of the Constitution, and that an Act of Congress which requires a party to produce his private books and papers, and if he refuses to do so upon demand, permits the Government to assume as true its allegations as to the contents of said books and papers, it is unconstitutional.

This protection reaches all alike, whether accused or not, and the duty of giving it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws. . . . which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for maintence of such fundamental rights:

Weeks v. United States, 232 U. S. 392,

and unlawful injury to business or property, or to take away property without due process of law, is a property right that is actionable:

12 C. J. 589, Sec. 114, and cases there cited.

And Courts concern themselves in the maintenance of civil rights:

Taylor v. Kercheval, 82 Fed. 497.

III.

Petitioners hereof, as complainants brought actions in the District Court below to prohibit the aforesaid income tax activities of aforesaid Internal Revenue Agents, the first action was cause No. 5716-W, an individual suit against each of the aforesaid Internal Revenue Agents for damages [R. 98-115], this said action was dismissed. And the next action was cause No. 7315-O'C in said District Court below, and in this action the bill of complaint was amended twice, and this action was against the said Internal Revenue Agencies as Government Agencies, and the second amended bill in said action did not have a hearing which is shown by the record hereof in said District Court below in Reporter's Transcript of Proceedings [R. 189-194] wherein the said District Court held a proceeding on April 19, 1948, and compare the statements of the said court in said proceedings with the record, wherein the prayer of the second amended bill of complaint, has its prayer set forth [R. 33-34] which clearly shows that the said second amended bill of complaint has had no hearing or a day in court, which petitioners contend is a denial of due process of law, because judgments cannot be rendered only after trials of the issues, and the said second amended bill of complaint has been adjudged without any hearing or trial before the said District Court below, and thereby denied due process of law:

In *Hovey v. Elliott* (167 U. S. 418) the court approved the definition of "due process of law" as given by Daniel Webster in the *Dartmouth College* case, in the argument of which he said:

> "By the law of the land (which Webster said was equivalent to due process of law) is most clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."

In *Pennoyer v. Neff* (95 U. S. 714) it was held that the due process of law means a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.

IV.

The aforesaid charitable organization and benevolent trust estate involved in this action is organized under a contract and agreement by and between the trustees for said estate [R. 36-49], and courts usually regard the rights of American citizens to make and enter into contracts, especially so in trust estates, and in a court ruling wherein Federal Justice Gresham upheld the right to contracts and establish a trust estate, when he said in (27 Fed. 149):

> "A citizen of the United States cannot be denied the right to take and hold absolutely in trust, real and personal property in any State in the Union, nor can he be denied the right to accept conveyance in trust for his sole benefit or for the benefit of himself and

others. This Right is incident to National Citizenship."

Petitioners have been denied contract rights within aforesaid contract under which aforesaid charitable organization is organized and established and a court will protect such right:

> *Re Sawyer,* 124 U. S. 200, 210 (8 Sup. Ct. 482), 31 L. Ed. 402, 409,

and the court will support the trustees in carrying out the terms of their trust estate contract:

> *Clews v. Jamison,* 182 U. S. 461 (21 Sup. Ct. 845), 45 L. Ed. 1185.

A right of action which springs from a contract is property:

> *Forbes Pioneer Boat Line v. Board of Comrs.,* 258 U. S. 338;
>
> *Lamb v. Powder River, etc. Co.,* 132 Fed. 434.

Courts usually regard the rights of American citizens to make contracts, and in the case of:

> *Dufford v. Nowskoski,* 125 N. J. Eq. 262, 4 A. 2d 314 (1939),

Justice Rafferty said:

> "public policy requires . . . that men of full age and competent understanding shall have the utmost liberty of contracting, and their contracts when entered into freely and voluntarily, shall be held sacred and shall be enforced by the courts of justice."

The obligation of a contract includes everything within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence.

> *Edwards v. Kearzey,* 96 U. S. 595, quoted in
> *Waterville Realty Corp. v. Eastport,* 8 A. 2d 898 (Me. 1939).

In *Farrington v. Tennessee* (95 U. S. 683), the Court said:

> "the amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of the court to redress the wrong."

In impairing the obligation of a contract, it has been held, that, any deviation from its terms, by postponing or accelerating the performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation:

> *Green v. Biddle,* 8 Wheat. 1, quoted by Fishburne, J., in *Henry v. Alexander,* 194 S. E. 649, S. C. 1932.

And in the case of *Sturgis v. Crowninshield* (4 Wheat. 197), the court said:

> "Under the Constitution the obligation of a contract is not to be impaired at all. It is not a question of degree, manner, or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force; and any deviation by postponement

or acceleration of the period of performance, or imposing conditions not expressed, is a violation of the obligation. The slightest variation of the obligation impairs it to that extent and is unconstitutional."

V.

The aforesaid Norman Hayward, Internal Revenue Agent, in his demand for the trustees' books and records by and through threats of warrants being issued, procured the said books and records of the trustees for aforesaid benevolent trust estate, and after examining same [R. 15, par. 4-18] transferred assets, funds and property belonging to said charitable organization and benevolent trust estate, to the personal account of William D. Noland, petitioner hereof [R. 51,57], and then charged income taxation against said William D. Noland personally based upon said transfer of funds, assets and property belonging to said benevolent trust estate, which is prohibited by clause 1, of the Fourteenth Amendment to the Constitution of the United States, which provides:

"Clause 1. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

In an outstanding case (*Marbury v. Madison,* Cranch 1, U. S. Rep. 5), the court said (at page 58):

"The very essence of Civil Liberty certainly consists in the right of every individual to claim the protection of the law, whenever he receives an injury, one of the first duties of Government is to afford that protection."

The "property" protected by the aforesaid Fourteenth Amendment includes not only the thing owned but the right to acquire, use and dispose of it, and it has been so held:

Buchanan v. Warley, 245 U. S. 60,

and William D. Noland, petitioner hereof, contracted with the trustees for aforesaid charitable organization and benevolent trust estate, to care for poor people and children who have no funds to pay for health service, said William D. Noland to give said service without any salary, wages or profits from the said trustees for said benevolent trust estate, and freedom to contract for personal services is a right which is protected by aforesaid clause 1, of the Fourteenth Amendment of the Constitution of the United States, and the Supreme Court have so held:

Prudential Ins. Co. v. Cheek, 259 U. S. 530,

and it has been held, that property is land, goods, a business, *skill,* reputation, and whatever may have the effect of destroying property in those things even to a man's good name is destruction of property and a cause for action:

Dixon v. Holden, L. R. 7 Eq. 488, 492 (per Malins, V. C.),

and the right of any citizen to pursue any calling, business, or profession he may choose is held to be a property right within the protection of the Court:

New Method Laundry Co. v. MacCann, 174 Cal. 26, 161 Pac. 990, Ann. Cas. 1918C, 1022.

VI.

Petitioners hereof contend that when the aforesaid respondent hereof, Norman Hayward, Internal Revenue Agent, procured the trustees' books and records by threats and duress and examined said books and records and transferred and delivered assets, funds and property from the aforesaid charitable organization and benevolent trust estate to the personal account of William D. Noland personally without any permission to do so, it was an act of fraud on the part of said respondent as an agency of the United States Government and likewise on the part of other respondent Internal Revenue Agents hereof as agencies of the United States Government in sustaining the said Norman Hayward in the manner in which he procured the trustees' books and records, and any judgment obtained by fraud can be assailed, and the fact of being a party does not estop from relief against fraud; and it has been so held:

> *Johnson v. Waters,* 111 U. S. 640, 28 L. Ed. 547, 556.

In the denial of a hearing and day in court of the aforesaid second amended bill of complaint, by the abuse of discretion by the District Court below, and the Circuit Court of Appeals, for the Ninth Circuit of the United States, it is well established that courts are not at liberty to decide a cause contrary to the provisions of the Constitution of the United States:

> Cooley's Constitutional Limitations, and cases cited, p. 159 *et seq.*,

and no one is allowed to enrich himself by a mistake at law or fact:

> *Benson v. Bunting*, 127 Cal. 532, 59 Pac. 991, 78 Am. S. R. 81,

and the court has power to correct what has been wrongfully done:

> *Arkadelphia Mill Co. v. St. Louis So. Western*, 249 U. S. 134.

It is the duty of a Federal Court to support every right guaranteed by the Federal and State Constitutions:

> *Snypp v. St. of Ohio*, 70 Fed. 2d 535.

Conclusion.

Wherefore, petitioners pray that the judgment rendered by the United States Circuit Court of Appeals for the Ninth Circuit be reversed and the matter hereof be remanded under mandate to the proper court below for further hearing and proceedings subject to the prayer of the second amended bill of complaint, which said bill has had no hearing before the District Court below, and no hearing before the said Circuit Court of Appeals, which is shown as hereinbefore indicated in the record hereof.

Dated: Los Angeles, California, April 15, 1949.

Respectfully submitted,

WILLIAM D. NOLAND, *Trustee, in Propria Persona.*

WILLIAM D. NOLAND, *Personal, in Propria Persona.*